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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,522	08/24/2000	Zeev Maor	00654759	8228
26565	7590	07/07/2006	EXAMINER	
MAYER, BROWN, ROWE & MAW LLP P.O. BOX 2828 CHICAGO, IL 60690-2828			YU, GINA C	
		ART UNIT	PAPER NUMBER	1617

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/582,522	MAOR ET AL.	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 March 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,6,10,12,13,15-19 and 21-24 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,6,10,12,13,15-19 and 21-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

Receipt is acknowledged of response filed on March 16, 2006. Claims 1, 3-6, 10, 12, 13, 15-19, and 21-24 are pending. Claim rejections made under 35 U.S.C. § 103 (a) as indicated in the previous Office action dated October 19, 2005 are maintained for the reasons of record.

It is noted that in the second rejection statement in the previous Office action, contains an inadvertent error: the Kyotaro reference (JP 08-113530, English translation) was omitted from the list of the prior arts of the proceeding rejection which rejects claims 1, 3, 10, 12, 13, and 15-17. The error is considered nonharmful, and is corrected in the present Office action.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 3, 10, 12, 13, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malencon (FR 2242971, English translation) in view of Kyotaro (JP 08-113530, English translation), Maor et al. (International J. of Cosmetic Science 19, 105-110, 1997) and Flick (Cosmetic Ingredients: An Industrial Guide).**

Rejection is maintained for the reasons of record.

**Claims 4-6, 18, 19, 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malencon (FR 2242971, English translation) in view of Kyotaro (JP 08-113530, English translation), Maor et al. (International J. of Cosmetic**

**Science 19, 105-110, 1997) and Flick (Cosmetic Ingredients: An Industrial Guide) as applied to claims 1, 3, 10, 12, 13-19, and 21-23 as above, and further in view of Thompson et al. (US 5425954).**

Rejection is maintained for the reasons of record.

***Response to Arguments***

Applicant's arguments filed on March 16, 2006 have been fully considered but they are not persuasive.

Applicants assert that the proposed combination of Malencon and Kyotaro would render compositions of both references unsatisfactory for their intended purposes, as the compositions are directed to colorless gel and bath salts, respectively. It is respectfully noted that the present rejection is made in view of not only Malencon and Kyotaro, but also in view of Maor and Flick.

The rationale for combining the teachings of the references is that it would have been obvious to substitute the type of salts that are used in the Malencon gel with Dead Sea salts because Kyotaro and Maor teach the cosmetic benefits of the latter. Applicants' assertion that the coarse salts could not be incorporated in the Malencon to form a colorless gel is also unpersuasive because Maor already teaches a liquid gel comprising the Dead Sea salt concentrate.

Applicants' argument regarding the "the principle operation" of the Malencon and Kyotaro compositions is also unpersuasive because, the argument takes into account of only those two references, while the rejection was made in view of Maor and Flick as

well. As discussed above, the proposed combination is concerned with the modification of the Malencon gel by substituting another type of salts which have been used in gel.

Applicants also argue that the nonionic solubilizers of Flick are not taught to "provide" clarity to an otherwise cloudy gel, but merely to add to an already clear gel. Examiner respectfully disagrees. Flick makes it clear that these nonionic solubilizers are "useful" in making clear gels by solubilizing hydrophobic compounds that would otherwise make the gel cloudy. Furthermore, a clear gel comprising sea salts is already taught in Malencon. In the process of modification of the Malencon composition, it would have been obvious to a skilled artisan to dissolve hydrophobic compounds in the Flick nonionic solubilizers to maintain the clarity of the gel.

With respect the rejection made in view of Malencon, Kyotaro, Maor and Flick , and further in view of Thompson, applicants assert that there is no motivation to combine the references. While applicants assert that the teaching o Thompson is limited to the disclosure of "various characteristics and uses of Vitamin E", the argument is unconvincing. It is well settled in patent law that the strongest rationale for combining references is a recognition, expressly or impliedly in the prior art or drawn from a convincing line of reasoning based on established scientific principles or legal precedent, that some advantage or expected beneficial result would have been produced by their combination. See In re Sernaker, 702 F.2d 989, 994-95, 217 USPQ 1, 5-6 (Fed. Cir. 1983). The "various characteristics and uses of Vitamin E" here refer to the specific cosmetic benefits of the compound, which provides the strongest

rationale for combining vitamin E in the Dead Sea salt composition as suggested by Malencon, Kyotaro, Maor, and Flick.

***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 7:00AM until 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina Yu  
Patent Examiner



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER